

Market: Seattle  
Cell Site Number: SC-87  
Cell Site Name: Tully's

## SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT ("**Agreement**"), dated as of the date below, is entered into by Tully's Coffee Corporation, a Washington Corporation, having a mailing address of 3100 Airport Way South, Seattle, WA 98134 (hereinafter referred to as "**Sublandlord**") and AT&T Wireless Services of Washington, LLC, an Oregon limited liability company d/b/a AT&T Wireless, by AT&T Wireless Services, Inc., a Delaware corporation, its member, having a mailing address of P O Box 2088, Rancho Cordova, CA 95741-2088 (hereinafter referred to as "**Subtenant**").

## BACKGROUND

Sublandlord leases portions of that certain plot, parcel or tract of land, together with all rights and privileges arising in connection therewith, located at 3100 Airport Way South, City of Seattle, in the County of King, State of Washington (collectively, the "**Property**") from Rainier Commons LLC, a Washington limited liability company having a mailing address of 1420 Fifth Avenue, Suite 3400, Seattle, WA 98101 (hereinafter referred to as "**Landlord**"). Sublandlord leases the Property pursuant to that certain lease between Sublandlord and Landlord (as successor in interest to Kent Central LLC) dated as of August 16, 1999, as modified by certain amendments thereto (the "**1999 Lease**"). Subtenant presently uses a portion of the Property in connection with its federally licensed communications business pursuant to an Option and Sublease Agreement dated as of December 21, 2001, between and among Sublandlord and Subtenant (the "**2001 Sublease**"). Subtenant and Sublandlord wish to remove the equipment of Subtenant that is currently located on the Property pursuant to the 2001 Sublease and terminate the 2001 Sublease as of the effective date of this Agreement. Subtenant desires to use a portion of the Property in connection with its federally licensed communications business and to relocate the existing equipment, or locate new equipment in that portion of the Property. Sublandlord desires to grant to Subtenant the right to use a portion of the Property in accordance with this Agreement. Landlord desires for the relocation of Subtenant's property within the Property, and desires to give its consent to the Agreement.

The parties agree as follows:

- 1. LEASE OF PREMISES.** Sublandlord leases to Subtenant portions of the Property consisting of (a) a room/cabinet/ground area space of approximately one hundred sixty (160) square feet; and (b) space on the roof of the building as described on attached **Exhibit 1** (collectively, the "**Premises**").
- 2. PERMITTED USE.** Subtenant may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of its communications fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure, associated antennas, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (collectively, the "**Communication Facility**"), as well as the right to review title on the Property, provided that prior to installing any such equipment Subtenant must obtain Sublandlord's prior written consent as to the type of equipment, its location and suitability for the Property, which consent shall not be unreasonably withheld; Subtenant further has the right, with Sublandlord's prior written consent, to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, at no additional cost to Sublandlord (collectively, the "**Permitted Use**"). Sublandlord and Subtenant agree that the Communication Facility will be described on **Exhibit 1**. If **Exhibit 1** includes drawings of the initial installation of the Communication Facility, Sublandlord's execution of this Agreement will signify Sublandlord's approval of

Rev. 1/1/03  
Signature Lease



**Exhibit 1.** Subtenant has the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the main entry point to the equipment shelter or cabinet, and to make Property improvements, alterations, upgrades or additions appropriate for Subtenant's use, subject to Sublandlord's prior written consent as to the location, size and suitability of each of the latter to the Property ("**Subtenant Changes**"). Subtenant Changes include the right to construct a fence around the Premises and undertake any other appropriate means to secure the Premises as long as such changes do not interfere with the use of the Property by Sublandlord or any other Subtenant of Sublandlord. Subtenant agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the Communication Facility on the Property. Subtenant may modify, supplement, replace, upgrade, expand the equipment, increase the number of antennas or relocate the Communication Facility within the Premises at any time during the term of this Agreement only with the prior written consent of Sublandlord. Subtenant will only be allowed to make such alterations to the Property in order to accomplish Subtenant's Changes or to insure that Subtenant's Communication Facility complies with all applicable federal, state or local laws, rules or regulations if approved by Sublandlord in writing. Subtenant agrees that at the request of Sublandlord, and at Sublandlord's expense, Subtenant shall move any and all of the Communications Facility requested by Sublandlord to be moved, to a location chosen by Sublandlord and reasonably acceptable to Subtenant to accommodate Sublandlord's use of the Property.

**3. TERM.**

(a) The initial lease term will be five (5) years ("**Initial Term**"), commencing upon the Commencement Date, as defined below. The Initial Term will terminate on the last day of the month in which the fifth (5<sup>th</sup>) annual anniversary of the Commencement Date occurs.

(b) Subtenant shall have the option to renew this Agreement for two (2) additional terms of five (5) years each (each five (5) year term shall be defined as the "**Extension Term**"), upon the same terms and conditions as provided in this Agreement. Each Extension Term shall be subject to automatic renewal unless the Subtenant notifies the Sublandlord in writing of Subtenant's intention not to renew this Agreement at least sixty (60) days prior to the expiration of the then existing term.

(c) If Subtenant remains in possession of the Premises after the termination or expiration of this Agreement then Subtenant will be deemed to be occupying the Premises on a month-to-month basis (the "**Holdover Term**"), subject to the terms and conditions of this Agreement. Rent during such Holdover Term shall be 125% of the monthly rental amount which is being paid at the end of the immediately preceding Term, unless Sublandlord consents in writing to the Holdover Term in which event shall be the amount being paid at the end of the immediately preceding Term.

(d) The Initial Term, the Extension Term and the Holdover Term are collectively referred to as the Term ("**Term**").

**4. RENT.**

(a) Commencing on the date that Subtenant commences construction (the "**Commencement Date**"), Subtenant will pay the Sublandlord a monthly rental payment of Eight Hundred and No/100 Dollars (\$800.00), ("**Rent**"), at the address set forth above, on or before the fifth (5<sup>th</sup>) day of each calendar month in advance. Rent will be prorated for any partial month. The initial Rent payment will be forwarded by Subtenant to Sublandlord within thirty (30) days after the Commencement Date.

(b) Beginning in year one (1) of the first Extension Term, the monthly Rent shall increase to One Thousand Five Hundred and No/100 Dollars (\$1,500.00) and shall remain at that rate for the length of the first Extension Term.

(c) In year one (1) of each successive Extension Terms, the monthly Rent will increase by ten percent (10%) over the Rent paid during the previous Extension Term.

**5. APPROVALS.**



(a) Sublandlord agrees that Subtenant's ability to use the Premises is contingent upon the suitability of the Premises for Subtenant's Permitted Use and Subtenant's ability to obtain all governmental licenses, permits, approvals or other relief required of or deemed necessary or appropriate by Subtenant for its use of the Premises, including without limitation applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "**Government Approvals**"). Once Landlord and Sublandlord's written consent is obtained for the Subtenant's proposed Communication Facility, Sublandlord authorizes Subtenant to prepare, execute and file all required applications to obtain Government Approvals for Subtenant's Permitted Use under this Agreement and agrees to reasonably assist Subtenant with such applications. In addition, Subtenant shall have the right to initiate the ordering and/or scheduling of necessary utilities.

(b) Subtenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of Subtenant's choice. In the event Subtenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory, Subtenant will have the right to terminate this Agreement upon notice to Sublandlord. All costs of the title report or commitment shall be Subtenant's.

(c) Subtenant may also perform and obtain, at Subtenant's sole cost and expense, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if the Subtenant's use of the Premises will be compatible with Subtenant's engineering specifications, system, design, operations or Government Approvals.

**6. TERMINATION.** This Agreement may be terminated, without penalty or further liability, as follows:

(a) by Subtenant or Sublandlord on thirty (30) days prior written notice, if the other party remains in default under Paragraph 15 Default and Right to Cure of this Agreement after the applicable cure periods;

(b) by Subtenant upon written notice to Sublandlord, if Subtenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now and hereafter intended by Subtenant; or if Subtenant determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable; or

(c) by Subtenant on ninety (90) days prior written notice for any reason, so long as Subtenant pays Sublandlord a termination fee equal to six (6) months Rent, at the then current rate, provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Subtenant under any one or more of Paragraphs 5(b) Approvals, 6(a) Termination, 6(b) Termination, 8 Interference, 11(d) Environmental, 18 Severability, 19 Condemnation or 20 Casualty of this Agreement.

**7. INSURANCE.** Subtenant will carry during the Term, at its own cost and expense, the following insurance: (i) "All Risk" property insurance for its property's replacement cost; (ii) commercial general liability insurance with a minimum limit of liability of \$2,500,000 combined single limit for bodily injury or death/property damage arising out of any one occurrence; and (iii) Workers' Compensation Insurance as required by law. It is understood and agreed that the coverage afforded by Subtenant's commercial general liability insurance also applies to Sublandlord as an additional insured, but only with respect to Sublandlord's liability arising out of its interest in the Property.

**8. INTERFERENCE.**

(a) Where there are existing radio frequency user(s) on the Property, the Sublandlord will provide Subtenant with a list of all existing radio frequency user(s) on the Property to allow Subtenant to evaluate the potential for interference. Subtenant warrants that its use of the Premises will not interfere with existing radio frequency user(s) on the Property so disclosed by Sublandlord as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

(b) Sublandlord will not use, nor will Sublandlord permit its employees, Subtenants, licensees, invitees or agents to use, any portion of the Property in any way which interferes with the operations of Subtenant or the rights of Subtenant under this Agreement; provided that Sublandlord and Landlord may lease other portions of each of their Property to other telecommunications companies which shall be deemed not to interfere with Subtenant's use of the Premises so long as all of such telecommunications companies continue to comply with all applicable laws and regulations. Sublandlord will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Subtenant. In the event any such interference does not cease within the aforementioned cure period then the parties acknowledge that Subtenant will suffer irreparable injury, and therefore, Subtenant will have the right, in addition to any other rights that it may have at law or in equity, for Sublandlord's breach of this Agreement, to elect to enjoin such interference or to terminate this Agreement upon notice to Sublandlord.

#### 9. INDEMNIFICATION.

(a) Subtenant agrees to indemnify, defend and hold Sublandlord harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the installation, use, maintenance, repair or removal of the Communication Facility or Subtenant's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Sublandlord, its employees, agents or independent contractors.

(b) Sublandlord agrees to indemnify, defend and hold Subtenant harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the actions or failure to act of Sublandlord or its employees or agents, or Sublandlord's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Subtenant, its employees, agents or independent contractors.

(c) Notwithstanding anything to the contrary in this Agreement, Subtenant and Sublandlord each waives any claims that each may have against the other with respect to consequential, incidental or special damages.

#### 10. WARRANTIES.

(a) Subtenant and Sublandlord each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Agreement and bind itself hereto through the party set forth as signatory for the party below.

(b) Sublandlord represents and warrants that: (i) Sublandlord controls the Property and structure by lease or license; (ii) as long as Subtenant is not in default then Sublandlord grants to Subtenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises; (iii) Sublandlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on the Sublandlord; and (iv) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, Sublandlord will use best efforts to provide promptly to Subtenant a mutually agreeable Subordination, Non-Disturbance and Attornment Agreement.

#### 11. ENVIRONMENTAL.

(a) Sublandlord and Subtenant agree that each will be responsible for compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or other matters as may now or at any time hereafter be in effect, that are now or were related to that party's activity conducted in, or on the Property.

(b) Sublandlord and Subtenant agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs, or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to (i) the indemnifying party's

failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or matters as may now or hereafter be in effect, or (ii) any environmental or industrial hygiene conditions that arise out of or are in any way related to the condition of the Property and activities conducted by the party thereon, unless the environmental conditions are caused by the other party.

(c) The indemnifications of this Paragraph 11 Environmental specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Paragraph 11 Environmental will survive the expiration or termination of this Agreement.

(d) In the event Subtenant becomes aware of any hazardous materials on the Property, or any environmental or industrial hygiene condition or matter relating to the Property that, in Subtenant's sole determination, renders the condition of the Premises or Property unsuitable for Subtenant's use, or if Subtenant believes that the leasing or continued leasing of the Premises would expose Subtenant to undue risks of government action, intervention or third-party liability, Subtenant will have the right, in addition to any other rights it may have at law or in equity, to terminate the Agreement upon notice to Sublandlord.

**12. ACCESS.** At all times throughout the Term of this Agreement, and at no additional charge to Subtenant, Subtenant and its employees, agents, and subcontractors, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access to and over the Property, from an open and improved public road to the Premises which may change from time to time, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises and Sublandlord grants to Subtenant an easement for such access. Sublandlord agrees to give Subtenant reasonable advance notice of any change of access to the Premises, and agrees that said such change of access shall at all times provide Tenant with reasonable access to the Premises. In the event any public utility is unable to use the access or easement provided to Subtenant then the Sublandlord agrees to grant additional access or an easement either to Subtenant or to the public utility, for the benefit of Subtenant, at no cost to Subtenant.

**13. REMOVAL/RESTORATION.** All portions of the Communication Facility brought onto the Property by Subtenant will be and remain Subtenant's personal property and, at Subtenant's option, may be removed by Subtenant at any time during the Term. Sublandlord covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Subtenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of the Sublandlord that all improvements of every kind and nature constructed, erected or placed by Subtenant on the Premises will be and remain the property of the Subtenant and may be removed by Subtenant at any time during the Term. At the earlier of the expiration or termination of this Agreement, Subtenant shall be required to remove from the Premises and the Property any foundations, underground utilities, and the Communication Facility and restore the Property to its condition prior to the installation of such foundations, utilities and Communication Facility, normal wear and tear and loss by casualty or other causes beyond the control of Subtenant excepted.

**14. MAINTENANCE/UTILITIES.**

(a) Subtenant will keep and maintain the Premises and Communication Facility in good condition, reasonable wear and tear and damage from the elements excepted. If Subtenant fails to maintain, repair or replace the Premises as required by this section, Sublandlord may, upon ten (10) days' prior notice to Subtenant (except that no notice shall be required in the case of an emergency), enter the Premises and perform such maintenance or repair (including replacement, as needed) on behalf of Subtenant. In such case, Subtenant shall reimburse Sublandlord for all costs reasonably incurred in performing such maintenance or repair, plus ten percent (10%), immediately upon demand. Sublandlord will maintain and repair the Property and access thereto, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements.

(b) Subtenant will be responsible for paying when due all utilities charges for electricity, telephone service or any other utility used or consumed by Subtenant on the Premises. In the event Subtenant cannot secure its own metered electrical supply, Subtenant will have the right, at its own cost and expense, to submeter from the Sublandlord. When submetering is necessary and available, Sublandlord will read the meter on a monthly or quarterly basis and provide Subtenant with the necessary usage data in a timely manner to enable Subtenant to compute such utility charges. Failure by Sublandlord to perform this function will limit utility fee recovery by Sublandlord to a 12-month period. Sublandlord will reasonable cooperate with any utility company requesting an easement over, under and across the Property in order for the utility company to provide service to the Subtenant. Sublandlord will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Sublandlord, of such services to be furnished or supplied by Sublandlord.

**15. DEFAULT AND RIGHT TO CURE.**

(a) The following will be deemed a default by Subtenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than ten (10) days after receipt of written notice from Sublandlord of such failure to pay; or (ii) Subtenant's failure to perform any other term or condition under this Agreement within thirty (30) days after receipt of written notice from Sublandlord specifying the failure. No such failure, however, will be deemed to exist if Subtenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Subtenant. If Subtenant remains in default beyond any applicable cure period, Sublandlord will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed a default by Sublandlord and a breach of this Agreement. Sublandlord's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within thirty (30) days after receipt of written notice from Subtenant specifying the failure. No such failure, however, will be deemed to exist if Sublandlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Sublandlord. If Sublandlord remains in default beyond any applicable cure period, Subtenant will have the right to exercise any and all rights available to it under law and equity, including the right to cure Sublandlord's default and to deduct the costs of such cure from any monies due to Sublandlord by Subtenant.

**16. ASSIGNMENT/SUBLEASE.** Subtenant will have the right to assign, sell or transfer its interest under this Agreement without the approval or consent of Landlord, to Subtenant's principal, affiliates, subsidiaries, subsidiaries of its principal or to any entity which acquires all or substantially all of Subtenant's assets in the market defined by the Federal Communications Commission ("FCC") in which the Property is located by reason of merger, acquisition or other business reorganization. Subtenant may not otherwise assign this Agreement without Sublandlord's prior written consent. Upon any assignment permitted by this Agreement, Subtenant will not be relieved of any future performance, liabilities or obligations under this Agreement unless the assignee has the financial capability to fulfill all of the obligations under the Agreement, is licensed by the FCC to operate the Communication Facility and assumes all liabilities and obligations of Subtenant hereunder.

**17. NOTICES.** All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. A copy of all notices hereunder to one of the other two parties will also be given to the other one of the two parties. Notices will be addressed to the parties as follows:

If to Subtenant: AT&T Wireless Lease Administration  
c/o Wireless Asset Management

Re: AWS Cell Site #: SC87; Cell Site Name: Tully's  
P O Box 2088  
Rancho Cordova, CA 95741-2088

with a copy to: AT&T Wireless  
Attn.: Legal Department  
Re: AWS Cell Site #: SC87; Cell Site Name: Tully's  
8645 154<sup>th</sup> Avenue NE  
Redmond WA 98052

If to Sublandlord: Tully's Coffee Corporation  
Attn: President  
3100 Airport Way So.  
Seattle, WA 98134 ,

If to Landlord: Rainier Commons LLC  
1420 Fifth Avenue, Suite 2625  
Seattle, WA 98101

with a copy to: Philip Roberts  
Ryan, Swanson, & Cleveland, PLLC  
1201 Third Avenue, Suite 3400  
Seattle, WA 98101

Any party hereto may change the place for the giving of notice to it by thirty (30) days written notice to the other parties as provided herein.

18. **SEVERABILITY.** If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein. However, if the invalid, illegal or unenforceable provision materially affects this Agreement then the Agreement may be terminated by either party on ten (10) business days prior written notice to the other party hereto.

19. **CONDEMNATION.** In the event Sublandlord receives notification of any condemnation proceedings affecting the Property, Sublandlord will provide notice of the proceeding to Subtenant within forty-eight (48) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Subtenant's reasonable determination, to render the Premises unsuitable for Subtenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Subtenant will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses, provided that any award to Subtenant will not diminish Sublandlord's recovery. Subtenant will be entitled to reimbursement for any prepaid Rent on a prorata basis.

20. **CASUALTY.** Sublandlord will provide notice to Subtenant of any casualty affecting the Property within forty-eight (48) hours of the casualty. If any part of the Communication Facility or Property is damaged by fire or other casualty so as to render the Premises unsuitable, in Subtenant's sole determination, then Subtenant may terminate this Agreement by providing written notice to the Sublandlord, which termination will be effective as of the date of such damage or destruction. Upon such termination, Subtenant will be entitled to collect all insurance proceeds payable to Subtenant on account thereof and to be reimbursed for any prepaid Rent on a prorata basis.

21. **WAIVER OF LANDLORD'S AND SUBLANDLORD'S LIENS.** Landlord and Sublandlord each waive any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law, and Sublandlord and Landlord consent to Subtenant's right to remove all or any portion of the Communication Facility from time to time in Subtenant's sole discretion and without Landlord or Sublandlord's consent.

22. **MISCELLANEOUS.**

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by an authorized agent of the Sublandlord and an authorized agent of the Subtenant. No provision may be waived except in a writing signed by both parties.

(b) **Memorandum/Short Form Lease.** Either party will, at any time upon fifteen (15) business days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum or Short Form of Lease. Either party may record this Memorandum or Short Form of Lease at any time, in its absolute discretion.

(c) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(d) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

(e) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(f) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of the Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; and (vi) reference to a default will take into consideration any applicable notice, grace and cure periods.

(g) **Estoppel.** Either party will, at any time upon twenty (20) business days prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing (i) certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying this Agreement, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises. The requested party's failure to deliver such a statement within such time will be conclusively relied upon by the requesting party that (i) this Agreement is in full force and effect, without modification except as may be properly represented by the requesting party, (ii) there are no uncured defaults in either party's performance, and (iii) no more than one month's Rent has been paid in advance.

(h) **No Electronic Signatures/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Sublandlord and Subtenant and the handwritten legal execution of the consent hereto by Landlord.

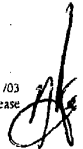
(i) Attorneys' Fees. If there is any legal proceeding between Sublandlord or Subtenant arising from this Agreement, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorney's fees and disbursements, incurred by such prevailing party in such action or proceeding and in any appeal in connection therewith. If such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorney's fees and disbursements shall be included in and as a part of such judgment.

(j) As soon as reasonably practicable, but no later than ten (10) days after the completion of the construction and installation of the Communication Facility, Subtenant shall discontinue use of the communication facility that is presently on the Property pursuant to the 2001 Sublease. As soon as reasonably practicable, but no later than thirty (30) days after the completion of the construction and installation of the Communication Facility, Subtenant shall remove all portions of the communication facility that is presently on the Property pursuant to the 2001 Sublease, and shall provide written notice to Sublandlord when such removal has been completed. Subtenant shall continue to pay rental under the 2001 Sublease to Sublandlord until such removal has been completed. Effective upon the removal of all portions of such communication facility and Sublandlord's receipt of Subtenant's notice regarding completion of the removal, the 2001 Sublease shall be terminated, and all rights and obligations of the parties under the 2001 Sublease will be extinguished except that the rights and obligations of the parties under Sections 8, 10, 12, 13, and 21 of the 2001 Sublease will survive the termination of the 2001 Sublease. If Subtenant does not remove all portions of the communication facility that is presently on the Property pursuant to the 2001 Sublease within the time period provided by this section, Subtenant shall pay to Sublandlord additional rental in the amount of \$100 per day for each day starting with the 31st day after the completion and installation of the Communication Facility, in addition to any amounts required under this Agreement and the 2001 Sublease.

(k) If Sublandlord terminates its interest in any portion of the Premises, or if Sublandlord ceases to be obligated under the Agreement, Subtenant agrees to attorn to Landlord with respect to the entire Premises, and Landlord agrees to recognize the Subtenant's right to occupy the Premises and agrees not to disturb Tenant's tenancy under the Agreement. Subtenant, which attornment shall be pursuant exclusively to the terms and conditions contained in this Agreement.

(l) Notwithstanding any provision herein to the contrary, Sublandlord, Subtenant and Landlord agree that upon any expiration or termination of the 1999 Lease ("1999 Lease Termination"), and provided that this Agreement is in effect and Subtenant is not in default hereunder, Sublandlord shall be deemed to have assigned this Agreement to Landlord and, as of the date of such 1999 Lease Termination, Landlord shall become the Sublandlord under the Agreement as if the Agreement were executed between Landlord and Subtenant, and Tully's Coffee Corporation shall be fully released and thereafter shall have no liability whatsoever under this Agreement.


[SIGNATURES APPEAR ON THE NEXT PAGE.]



IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the last date written below.

"SUBLANDLORD"

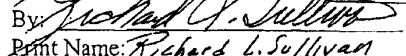
Tully's Coffee Corporation

By:   
Print Name: KRISTOPHER S. GALVIN  
Its: VICE PRESIDENT  
Date: 4-23-04

"SUBTENANT"

AT&T Wireless Services of Washington, LLC,  
A Delaware limited liability company,  
d/b/a AT&T Wireless

By: AT&T Wireless Services, Inc., a  
Delaware corporation, its Member

By:   
Print Name: Richard L. Sullivan  
Its: Regional Representative MGR.  
Date: 4/30/04

THE UNDERSIGNED HEREBY CONSENT TO THE FOREGOING SUBLEASE WITHOUT RELEASING  
SUBLANDLORD OR OTHERWISE AFFECTING ANY OBLIGATIONS OR LIABILITIES OF  
SUBLANDLORD UNDER THE 1999 LEASE EXCEPT AS SPECIFICALLY SET FORTH IN THIS  
SUBLEASE.

"LANDLORD"

Rainier Commons LLC

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

[ACKNOWLEDGMENTS APPEAR ON THE NEXT PAGE.]

Rainier Commons LLC

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss:

On the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, before me personally appeared \_\_\_\_\_, and acknowledged under oath that he is the \_\_\_\_\_ of \_\_\_\_\_ of \_\_\_\_\_, the \_\_\_\_\_ named in the attached instrument, and as such was authorized to execute this instrument on behalf of the \_\_\_\_\_.

Notary Public  
My Commission Expires: \_\_\_\_\_

**LANDLORD ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, 2004, before me personally appeared \_\_\_\_\_, and  
acknowledged under oath that he is the \_\_\_\_\_ of  
\_\_\_\_\_, the \_\_\_\_\_ named in the attached  
instrument, and as such was authorized to execute this instrument on behalf of the  
\_\_\_\_\_.

Place Notary Stamp Within Box

Notary Public:

SUBTENANT ACKNOWLEDGMENT

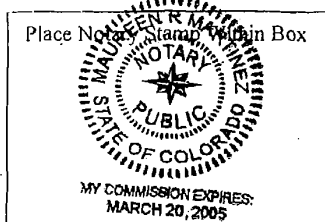
Colorado  
STATE OF WASHINGTON )  
 ) ss:

COUNTY OF KING Adams )

I CERTIFY that on April 30, 2004, Richard L. Sullivan, personally came before me and this person acknowledged under oath to my satisfaction, that:

(a) this person signed, sealed and delivered the attached document as Program Manager of AT&T Wireless Services, Inc., a corporation of the State of Delaware, which is the member of AT&T Wireless Services of Washington, LLC, the limited liability company named in this document;

(b) this document was signed and delivered by the corporation as its voluntary act and deed, as the member of the limited liability company, on behalf of said limited liability company.

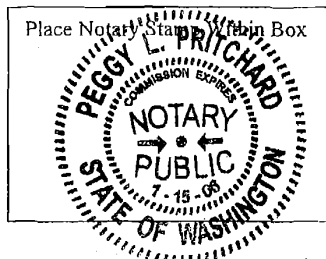


Notary Public: Maureen K. Martinez  
My Commission Expires: March 20, 2005

SUBLANDLORD ACKNOWLEDGMENT

STATE OF WASHINGTON )  
 ) ss:  
COUNTY OF KING )

On the 23<sup>rd</sup> day of APRIL, 2004, before me personally appeared KRISTINER S. GALVIN, and acknowledged under oath that he is the VICE PRESIDENT of TENNY'S COFFEE CORPORATION, the CORPORATION named in the attached instrument, and as such was authorized to execute this instrument on behalf of the CORPORATION.



Notary Public: Peggy L. Pritchard  
My Commission Expires: 7-15-06

## EXHIBIT I

### DESCRIPTION OF PREMISES

Page 1 of 4

to the Agreement dated \_\_\_\_\_, 2004, by and between Tully's Coffee Corporation, a Washington corporation, as Sublandlord, and AT&T Wireless Services of Washington, LLC, an Oregon limited liability company, d/b/a AT&T Wireless, as Subtenant.

#### Legal Description

The land referred to is situated in the State of Washington, County of KING, and is described as follows:

##### PARCEL 2

LOTS 1 THROUGH 6, BLOCK 233, SEATTLE TIDELANDS, IN KING COUNTY, WASHINGTON, AS SHOWN ON THE OFFICIAL MAPS ON FILE IN THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS AT OLYMPIA, WASHINGTON;

TOGETHER WITH LOTS 1 THROUGH 12, BLOCK 17, HANFORD'S ADDITION TO SOUTH SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 37, IN KING COUNTY, WASHINGTON;

TOGETHER WITH ALL OF VACATED ALLEY IN SAID BLOCK 17, AS VACATED UNDER CITY OF SEATTLE ORDINANCE NUMBER 38522;

TOGETHER WITH LOTS 1 THROUGH 12, BLOCK 16, HANFORD'S ADDITION TO SOUTH SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 37, IN KING COUNTY, WASHINGTON;

TOGETHER WITH ALL OF VACATED ALLEY IN SAID BLOCK 16, AS VACATED UNDER CITY OF SEATTLE ORDINANCE NUMBER 38521;

TOGETHER WITH ALL OF VACATED SOUTH WINTHROP STREET BETWEEN SAID BLOCKS 16 AND 17 AS VACATED UNDER CITY OF SEATTLE ORDINANCE NUMBER 38522;

TOGETHER WITH THAT PORTION OF VACATED SOUTH HANFORD STREET ADJOINING BLOCK 16, AS VACATED UNDER CITY OF SEATTLE ORDINANCE NUMBER 69571 AND WOULD ATTACH BY OPERATION OF LAW;

TOGETHER WITH THAT PORTION OF VACATED TENTH AVENUE SOUTH, AS VACATED UNDER CITY OF SEATTLE ORDINANCE NUMBER 95836, AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE PRODUCTION SOUTH OF THE EAST LINE OF BLOCK 16 OF SAID PLAT OF HANFORD'S ADDITION TO SOUTH SEATTLE AND THE WESTERLY RIGHT OF WAY LINE OF THE SEATTLE FREEWAY (PRIMARY STATE HIGHWAY NO 1);  
THENCE NORTHERLY ALONG SAID WESTERLY RIGHT OF WAY LINE TO THE PRODUCTION EAST OF THE NORTH LINE OF LOT 12, BLOCK 17 OF SAID PLAT;  
THENCE WEST ALONG SAID PRODUCED LINE TO THE EAST LINE OF BLOCK 17,  
THENCE SOUTH ALONG SAID EAST LINE AND THE SAME PRODUCED AND ALONG THE EAST LINE OF BLOCK 16 TO THE POINT OF BEGINNING;

#### Notes:

1. This Exhibit may be replaced by a land survey and/or construction drawings of the Premises once received by Subtenant.
2. Any setback of the Premises from the Property's boundaries shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number and mounting positions and locations of antennas and transmission lines are illustrative only. Actual types, numbers and mounting positions may vary from what is shown above.

Rev. 1/1/03  
Structure Lease

## DESCRIPTION OF PREMISES

Page 2 of 4

to the Agreement dated \_\_\_\_\_, 2004, by and between Tully's Coffee Corporation, a Washington corporation, as Sublandlord, and AT&T Wireless Services of Washington, LLC, an Oregon limited liability company, d/b/a AT&T Wireless, as Subtenant.

### Legal Description

EXCEPT FROM THE ABOVE DESCRIBED PARCEL 2 ANY PORTION LYING WITHIN THE NORTHERN PACIFIC RAILWAY COMPANY RIGHT OF WAY.

EXCEPT FROM THE ABOVE DESCRIBED PARCEL 2 THOSE PORTIONS AS CONVEYED TO THE STATE OF WASHINGTON FOR PRIMARY STATE HIGHWAY NO. 1 BY DEED RECORDED UNDER RECORDING NUMBER 6199964.

#### PARCEL 3

LOTS 1 THROUGH 6 AND THE EAST 102 FEET OF LOTS 7 THROUGH 12 AND THE NORTH 10 FEET OF SOUTH MORTON STREET ADJOINING, AS VACATED UNDER CITY OF SEATTLE ORDINANCE NUMBER 69575, ALL IN BLOCK 40, FIRST ADDITION TO SOUTH SEATTLE BY J J MORSE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 53, IN KING COUNTY, WASHINGTON;

TOGETHER WITH THAT PORTION OF VACATED SOUTH HANFORD STREET AS VACATED UNDER CITY OF SEATTLE ORDINANCE NUMBER 69571 AND WOULD ATTACH BY OPERATION OF LAW;

EXCEPT FROM THE ABOVE DESCRIBED PARCEL 3 THOSE PORTIONS AS CONVEYED TO THE STATE OF WASHINGTON FOR PRIMARY STATE HIGHWAY NO. 1 BY DEED RECORDED UNDER RECORDING NUMBER 6199964.

#### Notes:

1. This Exhibit may be replaced by a land survey and/or construction drawings of the Premises once received by Subtenant.
2. Any setback of the Premises from the Property's boundaries shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number and mounting positions and locations of antennas and transmission lines are illustrative only. Actual types, numbers and mounting positions may vary from what is shown above.

Rev. 1/1/03  
Structure Lease




EXHIBIT 1

DESCRIPTION OF PREMISES

Page 2 (Part 2) of 4

The foregoing description on Pages 1 and 2 of this Exhibit 1 covers ALL of the Property being leased from Landlord to Sublandlord under the 1999 Lease. The actual Premises being subleased by Sublandlord to Subtenant are described as follows:

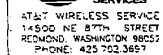
AT&T Wireless leased Premises consists of an area on the roof of approximately 20'x 8' which shall include a steel platform, a equipment screen and equipment cabinets to house it's radios and equipment located on the Northwest corner of Building 8. In addition, there is space for up to twelve (12) antennas of which, four (4) shall be located on the North side of the Northwest corner of Building 10; four (4) shall be located on West side of the equipment screen on Building 8; and four (4) shall be located on the South side of Building 8; as well as space on the roof to run the associated cables from the equipment space to each of the antennas. All buildings are located on the lot which has an address of 3100 Airport Way South, Seattle, King County Washington 98134.

[387985.01

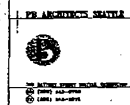
RCLLC 0001195

## Page 3 of 4

NO RESPONSE, FILING CHARGE



THIS DRAWING IS COPYRIGHTED AND IS THE SOLE PROPERTY OF THE OWNER. IT IS PROHIBITED TO REPRODUCE OR USE OF THIS DRAWING AND FOR THE INFORMATION CONTAINED IN IT IS FORBIDDEN WITHOUT THE WRITTEN PERMISSION OF THE OWNER.

[illegible]

**TULLY'S**  
**(REVISED)**

SC-87

FILE NO NUMBER 240047 IN HOUSE CREDIT (R) PXL

3100 AIRPORT WAY SOUTH  
SEATTLE, WA 98134

2007 034

OVERALL SITE PLAN

A-1

PLAT SOLE

NOTES:  
1. SITE PLAN IS A DIAGRAMMATIC REPRESENTATION ONLY. DO NOT SCALE. \*NOT ALL DIMENSIONS.  
2. VERIFY ALL PROPERTY LINE INFORMATION WITH EXISTING SURVEY DATA.  
3. THE PROPERTY CONSISTS OF NUMEROUS ADJACENT BUILDINGS INDICATED BY "X".

OVERALL SITE PLAN

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466
---	---	---	---	---	---	---	---	---	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----

**RCLLC 0001196**

